DIRECT INVESTIGATION

REPORT ON
HANDLING OF WATER SEEPAGE COMPLAINTS

March 2008

Office of The Ombudsman

Hong Kong

CONTENTS

Executive Summary

Chapter	Paragraph
1 INTRODUCTION	1.1 - 1.8
2 GOVERNMENT RESPONSIBILITY	2.1 - 2.8
3 HANDLING OF SEEPAGE COMPLAINTS: OPERATION ASPECTS	
Tripartite Arrangement	3.1 - 3.3
JO Scheme	3.4 - 3.6
Investigation Procedures	3.7 - 3.13
Enforcement Procedures	3.14 - 3.20
Statistics On Investigation and Enforcement	3.21 - 3.24
Entry into Premises	3.25 - 3.28
Home Ownership Schemes and Tenant Purchase Schemes	3.29
4 HANDLING OF SEEPAGE COMPLAINTS: MANAGEMENT ASPECTS	
Organisation of JO	4.1 - 4.7
Management of Consultants	4.8 - 4.13
5 HANDLING OF SEEPAGE COMPLAINTS: DISPUTE RESOLUTION ASPECTS	5.1 - 5.7
6 CASE STUDIES	6.1 - 6.2
Case 1	6.3 - 6.5
Case 2	6.6 - 6.9
Case 3	6.10 - 6.14
Case 4	6.15 - 6.22
Case 5	6.23 - 6.26
Case 6	6.27 - 6.32
Case 7	6.33 - 6.37

7 RECENT DEVELOPMENTS	7.1
Operational Timelines	7.2 - 7.3
Entering Suspected Premises	7.4
Management and Monitoring of Consultants	7.5 - 7.6
8 OBSERVATIONS AND OPINIONS	8.1 - 8.2
Difficulty in Identifying Source of Seepage	8.3 - 8.6
Insufficient Operational Timelines	8.7 - 8.9
Difficulty in Entering Premises Suspected to be "Source"	8.10 - 8.13
Disagreement over departmental Enforcement Responsibilities	8.14 - 8.17
Divergent Interpretation of "Nuisance"	8.18 - 8.19
Failure to Enforce Against Multiple Owners	8.20
Deficiency in JO's Management Information for Enforcement	8.21
Disjointed Organisational Structure of JO	8.22 - 8.23
Need for Formal Head	8.24 - 8.26
Frequent Turnover of JO Staff	8.27
Ineffective Management and Monitoring of Consultants	8.28
Short Duration of Consultant Contracts	8.29 - 8.30
Problems in Dispute Resolution	8.31 - 8.34
9 RECOMMENDATIONS	9.1 - 9.2
10 FINAL REMARKS	10.1 - 10.4

ANNEX

1	Tests Used in Investigating Water Seepage Complaints
2	Organisation and Staffing of JO

EXECUTIVE SUMMARY

Direct Investigation
Handling of Water Seepage Complaints

Introduction

Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or wastage of water, Government has a statutory responsibility to intervene.

2. The departments concerned are the Food and Environmental Hygiene Department ("FEHD"), the Buildings Department ("BD"), the Water Supplies Department ("WSD"). Since mid-2006, the Joint Office of BD and FEHD ("JO") has been set up for better interdepartmental coordination[1].

3. The handling of seepage matters has been a perennial source for complaints. The Ombudsman has expressed concern in her Annual Reports since 2003. However, complaints about the issue have continued even after establishment of JO. Against this background, The Ombudsman declared, on 5 July 2007, a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397 to examine the effectiveness of the JO scheme in handling seepage complaints.

4. The JO scheme has been set up for review in three years. At the time of writing of this report, Government is conducting an interim review of the scheme.

Background

Government Powers and Responsibilities

5. Maintenance of private buildings is the responsibility of property owners. Water seepage is often a maintenance problem which owners should deal with themselves. In practice, owners sometimes have difficulties in obtaining neighbours' cooperation and turn to Government for assistance. Government powers and responsibilities on seepage issues emanate from the

---

[1] *After a pilot JO set up in December 2004 in Shamshuipo district, the JO scheme was extended in mid-2006 to the whole territory.*

following statutes:

- Public Health and Municipal Services Ordinance, Cap. 132 ("PHMSO"), section 127 of which confers on FEHD the power to issue nuisance notices;
- Buildings Ordinance, Cap 123 ("BO"), which confers on BD powers to issue orders requiring owners to demolish unauthorised building works (section 24), to make safe dangerous buildings (section 26), to investigate and remedy building defects (section 26A), and to investigate and remedy drainage defects (section 28); and
- Waterworks Ordinance, Cap 102 ("WO"), section 16 of which confers on Water Services Department ("WSD") the power to issue notices requiring repairs in case of wastage of water.

6. Government has no legal powers to enforce against seepage that does not constitute public health nuisance, building safety risks or wastage of water.

Operation of JO

7. JO is to replace the previous Tripartite Arrangement[2] and provide a one-stop service in handling seepage complaints. It comprises staff from BD and FEHD, but not WSD as Government considered that WSD has only a limited role in such complaints.

8. JO investigates seepage complaints in three stages. Stage I (Confirmation of Nuisance) is a screening process by FEHD staff while Stages II (Initial Investigation) and III (Professional Investigation) are attempts by FEHD staff and BD staff respectively to identify the source of seepage.

9. Where the source is identified and enforcement action under PHMSO is considered appropriate, JO will issue a nuisance notice to the liable party. Where enforcement action under BO or WO is considered appropriate, the case will be referred to BD Headquarters or WSD for follow-up action.

10. However, the three departments do not always agree on enforcement responsibilities. For example, on seepage from water supply pipes:

---

[2] *Where FEHD acted as the first contact point and, where appropriate, referred cases to BD and WSD for further investigation.*

- WSD considers that enforcement is for FEHD under PHMSO, unless the leakage is so serious as to amount to wastage of water;
- Where the source is potable water, FEHD considers that this does not constitute public health nuisance and, therefore, enforcement under PHMSO is not appropriate; and
- BD considers that enforcement can be taken under either WO or PHMSO.

Structure of JO

11. JO comprises 19 District Offices grouped under two Regional Offices, as shown in **Annex 1.** It should be noted that:

- although the two Regional Offices are under BD officers, there is no formal head of JO;
- combined District Offices are provided in six districts where BD and FEHD staff work together under one roof; and
- "split" District Offices are provided in the remaining 13 districts where FEHD staff in the districts are supported by BD staff at the Regional Offices and other District Offices.

Reporting System within JO

12. The operational reporting system of JO is shown in **Annex 2** and the staff management reporting system in **Annex 3.** It should be noted that:

- the heads of JO Regional Offices are only nominal, as FEHD staff in JO do not report to them;
- BD staff and FEHD staff have separate reporting systems, both on operational and on staff management matters; and
- management of FEHD staff, including postings and transfers, is decided by senior FEHD officers who do not have a role in the operation of JO.

Management of Consultants

13. Consultants play an important role in JO's Stage III investigative work. JO has awarded 19 term contracts of not more than 12-month duration to eight consultants. All contracts are re-tendered upon expiry.

14. JO requires consultants to submit bi-weekly progress reports and attend bi-weekly progress meetings. For consultants who under-perform, JO will issue warning letter or recommend to BD Headquarters the issue of adverse report. Where warranted, BD Headquarters may terminate contracts or suspend consultants from bidding for new contracts.

15. From June 2005 to November 2007, JO has issued 57 warning letters and six adverse reports to its eight consultants.

Performance of JO

16. During the first 12 months of full JO operation from July 2006 to June 2007 ("our study period"), JO investigated 5,787 complaints with a success rate of 54%. This compared with 14% before the establishment of JO. The calculation of the success rates is given in **Annex 4**.

17. During our study period, JO issued a total of 487 nuisance notices under PHMSO, BD Headquarters issued 17 repair orders under BO and WSD issued 33 repair notices under WO. These enforcement figures and the number of complaints in **para. 16** represent actions taken during our study period and do not necessarily relate to the same complaints. JO keeps statistics only on cases of nuisance notices issued under PHMSO, but not on cases enforced by BD and WSD.

Solving Seepage Problems through Private Efforts

18. Some property owners do solve their seepage problems through their own efforts, often with the cooperation of their neighbours. Many others come to JO for assistance or demand Government remedy, or choose to take legal proceedings.

Case Studies

19. We have studied over 30 cases and summarised seven cases in our report as being illustrative of the problems in handling seepage complaints:

Case No.	Problems revealed
Case 1	Ineffective progress monitoring
Case 2	JO staff failing to comply with guidelines; ineffective progress monitoring; and frequent changes in JO staff
Case 3	BD, FEHD and WSD disagreeing on enforcement responsibilities; and JO failing to resolve disagreement in a timely manner
Case 4	Inefficiency and incompetence of the consultant; failure to manage the consultant effectively; and no attempt to intervene to redress an extreme situation
Case 5	Private owners' initiative more effective and efficient than JO in resolving the seepage problem; JO staff failing to comply with guidelines on entry; and ineffective management of consultants
Case 6	BD and FEHD staff holding different views on the action required of JO's consultant before referral to FEHD for applying for a Warrant of Entry; lack of cooperation and coordination between BD and FEHD staff
Case 7	Lack of coordination between BD and FEHD in handling public requests for JO information and in responding to inquiries of this Office

Recent Developments

20. JO is undergoing an interim review (see **para. 4**). Meanwhile, it has already introduced certain improvement measures to procedures concerning operational timelines, entry to suspected premises and management and monitoring of consultants.

Observations and Opinions

21. Our study has identified the following deficiencies in Government's arrangements in handling seepage complaints.

Difficulty in Identifying Source of Seepage

22. We note that the success rate of investigation as calculated by JO has increased significantly from 14% before JO to 54% for our study period. However, the comparison is not like with like, as JO has adopted new criteria to screen out complaints since its establishment.

Moreover, in the 12-month study period, JO had been unable to identify the source in 98 cases (see **Annex 4**).

23. The increase in success rate is, therefore, no cause for complacency. JO should explore ways to further improve its investigative capability and techniques.

Insufficient Operational Timelines

24. There is need for improvement in the way JO monitors the progress of its cases. This is well illustrated by the long periods of inaction by JO staff in **Case 1** (23 months) and by JO(BD)'s consultant in **Case 4** (five months).

25. Examination of JO's operational guidelines reveals that there were no target timelines or performance pledges for many tasks. There was also no stated requirement to inform complainants of progress.

26. In this connection, JO has recently established major milestones for monitoring progress in Stage III and intends to introduce working guidelines to inform complainants regularly of progress.

27. We note JO's recent improvement measures and consider that, in addition:

- JO should establish milestones also for monitoring progress in Stages I and II; and
- milestones for all Stages should be developed as performance pledges for public information.

Difficulty in Entering Suspected Premises

28. Practical difficulty in gaining entry often causes delays in investigation. During our study period, the longest time taken to gain entry was seven months.

29. In some cases, repeated unproductive visits were made and JO staff still did not initiate action to exercise their statutory power of entry. Meanwhile, difficulty in gaining entry is sometimes compounded by interface problems between the different parties undertaking different steps in exercising the powers of entry. In **Case 6**, FEHD staff and BD staff in JO disagreed on whether the requisite procedures had been followed before referral to FEHD staff for follow-up action on applying for a Warrant of Entry.

30. To expedite the process, JO has recently introduced a number of improvement measures, including adoption of a standard checklist to ensure all procedures have been followed before referral to FEHD staff for follow-up action.

31. Further to these improvements, we consider that:

- JO should review the guidelines for entry with particular focus on clarifying for staff and consultants interpretation of the requirements and improving the interface between the different parties concerned;
- JO staff should take prompt, proactive and decisive action in exercising their statutory powers of entry, particularly as it becomes apparent that cooperation would be unlikely; and
- JO should establish a system for monitoring progress to guard against delays.

Disagreement over Enforcement Responsibilities

32. Although JO is to coordinate enforcement, failure of FEHD, BD and WSD to agree on their enforcement responsibilities (see **para. 10**) defers and even hinders action. Some cases have dragged on for an inordinately long time (18 months of disagreement in **Case 3**), without any consideration for the plight of the affected parties.

33. We consider that the departments, together with their bureaux if necessary, should work out a mechanism to resolve their differences without delay.

Divergent Interpretation of "Nuisance"

34. Departmental disagreement, or uncertainty, over responsibilities is complicated by the diverse interpretation of "nuisance". While FEHD excludes seepage of rainwater or potable water from nuisance cases, BD and WSD tend to treat seepage cases not enforceable under BO and WO as nuisances enforceable by FEHD under PHMSO.

35. To resolve this, FEHD should develop a clear, precise and publicly defensible definition of "nuisance". It should establish practical guidelines for staff on the issue of nuisance notices. In pinning this "lead" responsibility on FEHD, we recognize that it will have to invoke inter-departmental consultation and coordination, to clarify the legal position and then establish an overall Government position on the way forward.

Failure to Enforce against Multiple Owners

36. Where the point of entry for water is the communal part of a building under multiple ownership, e.g. external wall or roof, JO will not take enforcement action because of the resources required to ascertain responsibilities for carrying out repair (e.g. checking the Deed of Mutual Covenant) and identifying and serving nuisance notices on all owners concerned. Moreover, JO considers it odd for the complainant, as an owner/occupier having a share of the collective responsibility of repairs, to be served a nuisance notice.

37. JO has a statutory responsibility to issue notices for abatement of nuisances, whether the liable party is a single owner or multiple owners. This responsibility does not diminish in cases where the complainant is one of the multiple owners; nor is resource constraint a good reason for not taking enforcement action where such is warranted.

Deficiency in JO's Management Information on Enforcement

38. JO's approach in measuring its performance using only the success rate of investigation is insufficient. In particular, no comprehensive statistics are kept to monitor actions taken after the source of seepage has been successfully identified (see **paras. 16-17**). This is a serious gap in management information which needs to be filled if JO to monitor adequately its overall performance.

Disjointed Organisational Structure of JO

39. A major reason for the problems in investigation and enforcement is JO's deficient organisational structure. <u>Firstly</u>, given that 12% of seepage cases are related to water supply pipes, excluding WSD from JO makes enforcement in these cases incomplete, and even difficult. In **Case 3**, for instance, WSD would not accept JO's investigation results.

40. <u>Secondly</u>, out of the 19 District JOs, 13 are "split" JOs where BD and FEHD work in separate offices (see **para. 11**). Such *modus operandi* is not conducive to efficient internal communication or *esprit de corp*, and may cause confusion to the public.

41. <u>Thirdly</u>, JO is a loose assortment of BD and FEHD staff in uneasy partnership (see **para. 12**). Neither BD nor FEHD is in a position to exercise proper authority over all JO staff, or to take full responsibility for JO's performance. Furthermore, the disjointed organisation is hardly conducive to the two grades of staff working together efficiently or communicating effectively and cultivating a mutual bond in service.

Need for Formal Head

42. To facilitate coordination and improve efficiency, we urge the three departments, together with their bureaux, to review seriously the organisation and staffing of JO to designate a department to be the acknowledged head of JO with formal authority and clear lines of command over staff secondment and office management. As part of this review, consideration should be given to including WSD in JO.

Frequent Turnover of JO Staff

43. Frequent turnover of staff is another reason leading to inefficient operation and long delays. While the causes of this phenomenon are many and diverse, it may be related to the fact that decisions on postings and transfers of FEHD staff in JO are made by FEHD officers not responsible for the operation of JO. Designation of a formal head of JO with authority for staff (see **para. 41**) should help in this regard.

Ineffective Management of Consultants

44. JO monitoring of the consultants leaves much to be desired. For example, in Case 4, despite the contractual requirement to submit the technical report within six weeks and many verbal and written reminders issued by JO(BD), Consultant A took four months to submit its initial report, 13 months to submit its revised report and 18 months to submit its second revised report. Despite bi-weekly progress meetings, there were five months of total inaction by Consultant A.

45. To strengthen its management of consultants, JO has revised the conditions of the consultant contracts awarded in 2007. BD Headquarters has recently set up bi-monthly meetings with the consultants to enhance monitoring.

46. Also, JO intends to introduce other improvement measures including setting timeframes for the major deliverables in future contracts, requiring consultants to adopt standardised reports for monitoring, and standardising the format of warning letters to consultants.

47. In addition, we consider that:

- JO(BD) should be more vigilant and more outcome-oriented in its operational monitoring of its seepage consultants; and
- in cases of serious under-performance or serious delay, JO(BD) should consider intervention to redress the situation.

Short Duration of Consultant Contracts

48. One of the causes of the poor performance of some consultants could be the short duration of their contracts (maximum 12 months). We appreciate that the short duration has the advantage of giving JO greater flexibility in revising contract conditions and in getting rid of non-performing consultants. On the other hand, the short duration often means that by the time the consultant and his staff gain knowledge and experience in the work, the contract is coming to an end. It is also relatively difficult for the consultant to recruit and retain good staff under the short contracts. We consider that JO should consider awarding contracts for longer duration, but with effective control over job allocation on the basis of performance.

Problems in Resolving Civil Disputes in Building Maintenance

49. For property owners who choose to initiate legal proceedings, the existing channels for dispute resolution have disadvantages:

- Generally legal proceedings are expensive both in terms of time and money.
- The Small Claims Tribunal can handle cases only where damage has actually been sustained and the claim does not exceed $50,000. It is particularly not useful in cases where the party suspected to be the source of seepage does not allow investigation or facilitate repairs.

50. This clearly points to the need for more effective and efficient avenue for resolving seepage disputes.

51. We note that Government has, since 2005, been giving consideration to setting up a Building Affairs Tribunal ("BAT") as an alternative channel to settle disputes on matters of building management and maintenance, including water seepage. We urge Government to give priority to this proposal.

52. Furthermore, we consider that the new tribunal should have the following two key features:

- it should have simple procedures and legal representation should be disallowed[3]; and
- it should be empowered to order investigation as well as repairs.

---

[3] *Reference may be drawn to section 19 of the Small Claims Tribunal Ordinance, Cap. 338 and section 23 of the Labour Tribunal Ordinance, Cap. 25, which provide that no barrister or solicitor, unless himself a claimant or defendant, shall have a right of audience before the tribunals.*

Recommendations

53. Government initiative is commendable in setting up JO as a one-stop service and in exploring ways for improving its operation. For further improvement, The Ombudsman makes the following recommendations:

Investigation of Seepage

(1) JO to explore ways to further improve its investigative capability and techniques (see **paras. 22-23**).

Work Procedures of JO

(2) JO to establish milestones for monitoring progress not only for Stage III investigation but also for Stages I and II (see **paras. 24-27**).

(3) JO to develop its internal milestones into performance pledges for public information (see **para. 27**).

Entry into Premises

(4) JO to review the guidelines for entry with particular focus on clarifying for staff and consultants interpretation of the requirements and improving the interface between the different parties concerned (see **paras. 28-31**).

(5) JO staff to take prompt, proactive and decisive action in exercising their statutory powers of entry (see **para. 31**).

(6) JO to establish a system for monitoring progress to guard against delays (see **para. 31**).

Disagreement over Enforcement Responsibilities

(7) BD, FEHD and WSD, together with their bureaux if necessary, to work out some mechanism to resolve their differences on enforcement responsibilities (see **paras. 32-33**).

Interpretation of "Nuisance"

(8) FEHD to develop a clear, precise and publicly defensible definition of "nuisance" (see **paras. 34-35**).

(9) FEHD to establish practical guidelines for staff on the issue of nuisance notices (see **para. 35**).

Enforcement against Multiple Owners

(10) JO to take enforcement action against multiple owners where warranted once advisory measures do not achieve results (see **paras. 36-37**).

Improving JO's Management Information on Enforcement

(11) JO to improve its management information by maintaining comprehensive statistics on the outcome of successful investigations and execution of remedial or enforcement action (see **para. 38**).

Organisation and Staffing of JO

(12) BD, FEHD and WSD, together with their bureaux if necessary, to seriously review the organisation and staffing of JO with a view to designating a department to be the acknowledged head of JO with formal authority and clear lines of command over staff and office management (see **paras. 39-43**).

(13) As part of the review in (12) above, consideration should be given to including WSD as part of JO operation (see **para. 42**).

Management of Consultants

(14) JO to be more vigilant and more outcome-oriented in its operational monitoring of its seepage consultants (see **paras. 44-47**).

(15) In cases of significant under-performance or serious delay, JO to intervene to redress the situation (see **para. 47**).

(16) JO to consider granting consultant contracts of longer duration (see **paras. 48**).

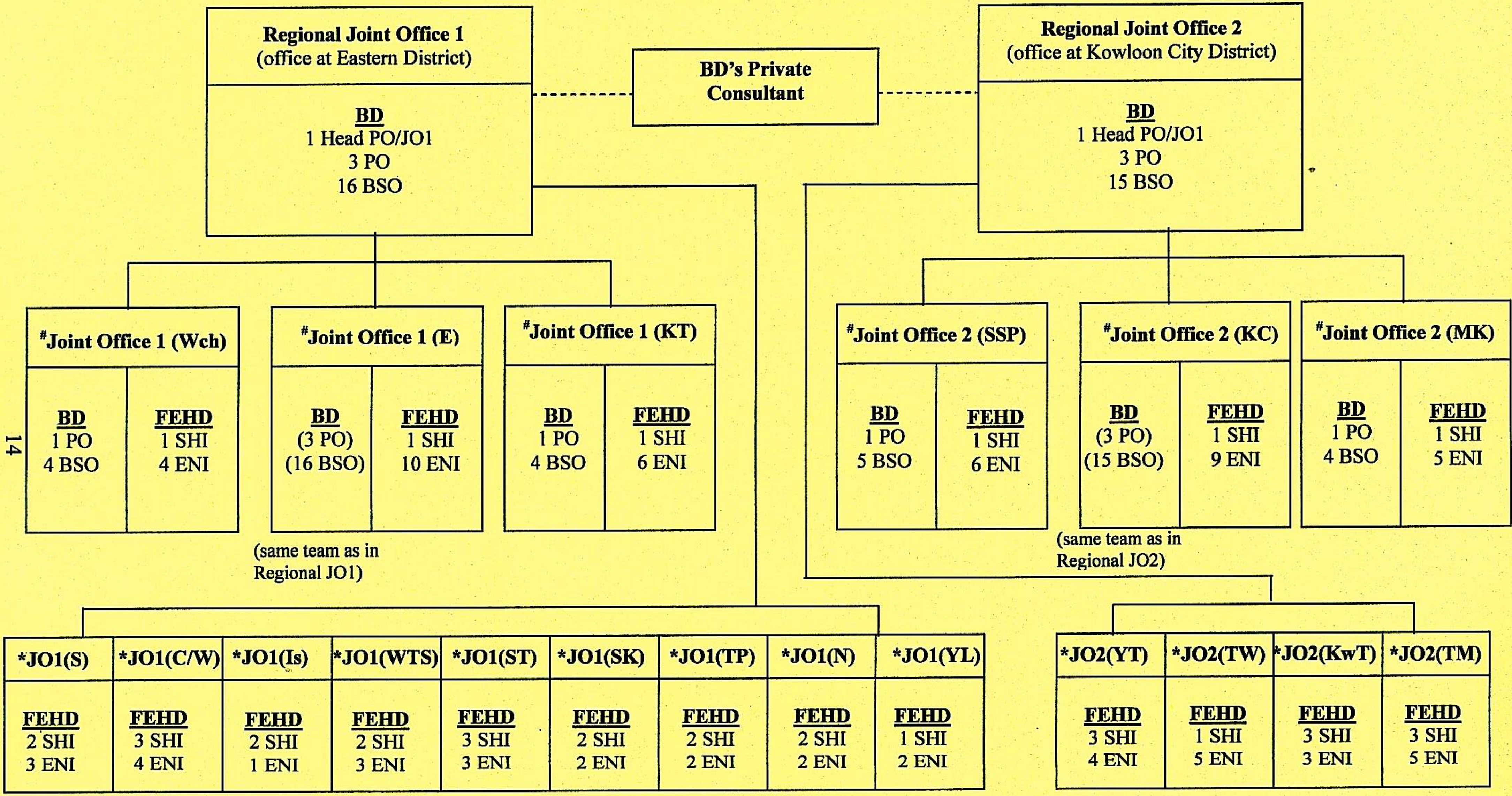
Resolution of Disputes on Building Maintenance

(17) BD to discuss with its bureau on according priority to the BAT proposal (see **paras. 49-52**).

Office of The Ombudsman
March 2008

Annex 1
(para. 11)

Organisation and Staffing of Joint Office

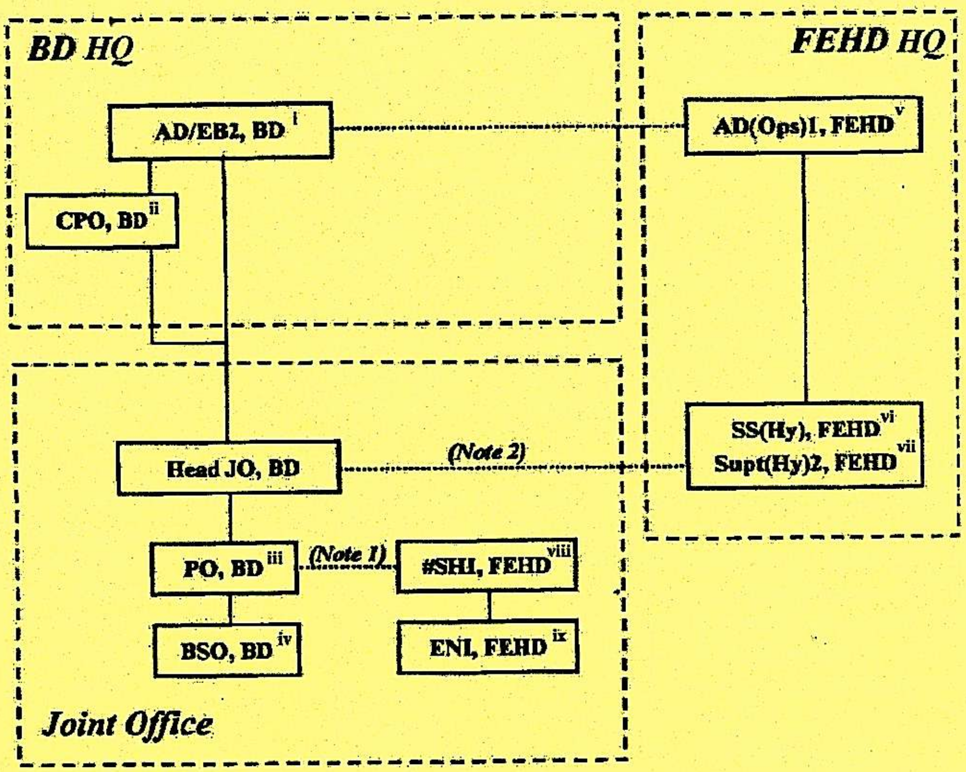


These 6 District JOs are combined offices with BD and FEHD officers working under one roof.
* These 13 District JOs are "split" offices with BD officers working in Regional JOs and other District JOs.

PO – Professional Officer
BSO – Building Safety Officer
ENI – Environmental Nuisance Investigator
SHI – Senior Health Inspector (part-time)

Annex 2
(para. 12)

Operational Reporting System of JO



Remarks

\# working on part-time basis.

Note 1:
- SHI and ENI of FEHD are responsible for Stage I & II investigation.
- If there is a need for technical support in Stage I and II investigations, ENI / SHI will seek advice from PO.
- If necessary, PO may seek assistance from FEHD in Stage III investigation, e.g. ENI / SHI to render assistance in gaining entry of premises and taking enforcement actions under the Public Health and Municipal Services Ordinance, Cap. 132.

Note 2: Playing a coordinating role in the review of policy matters and procedural guides concerning the operation of Joint Office.

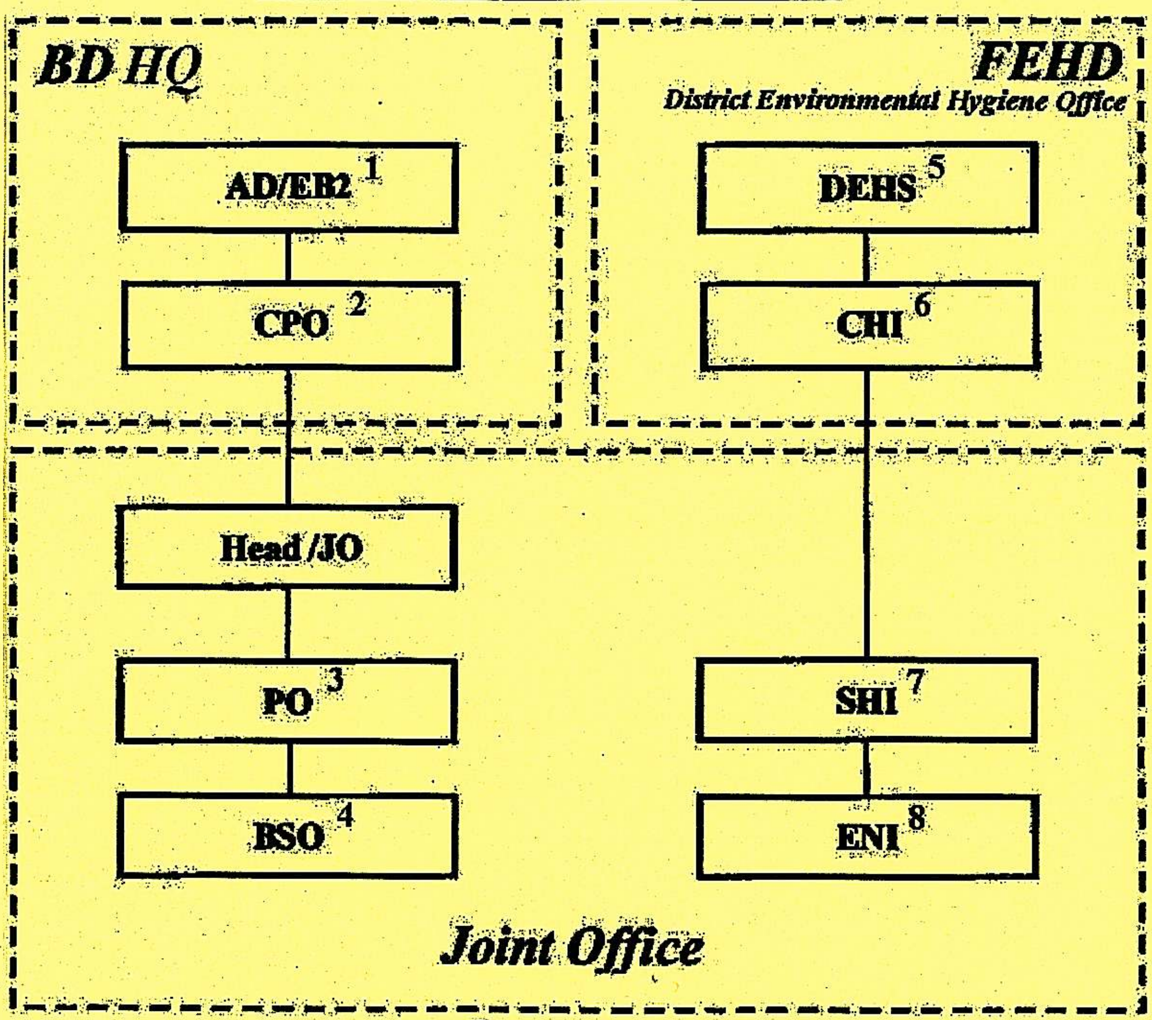
Key:

i	AD/EB2, BD	Assistant Director/Existing Buildings 2, BD
ii	CPO, BD	Chief Professional Officer, BD
iii	PO, BD	Professional Officer, BD
iv	BSO, BD	Building Safety Officer, BD
v	AD(Ops)1, FEHD	Assistant Director (Operations) 1, FEHD
vi	SS(Hy), FEHD	Senior Superintendent (Hygiene), FEHD
vii	Supt(Hy)2, FEHD	Superintendent (Hygiene) 2, FEHD
viii	SHI, FEHD	Senior Health Inspector, FEHD (working on part-time basis)
ix	ENI, FEHD	Environmental Nuisance Investigator, FEHD

Source: Chart received from BD who has incorporated FEHD's input

Annex 3
(para. 12)

Staff Management Reporting System of JO



Key:

1	AD/EB2	Assistant Director/Existing Buildings 2, BD
2	CPO	Chief Professional Officer, BD
3	PO	Professional Officer, BD
4	BSO	Building Safety Officer, BD
5	DEHS	District Environmental Hygiene Superintendent, FEHD
6	CHI	Chief Health Inspector
7	SHI	Senior Health Inspector, FEHD
8	ENI	Environmental Nuisance Investigator, FEHD

Source: Chart received from BD who has incorporated FEHD's input

Annex 4
(para. 16)

Success Rate of Investigation by JO

Breakdown of complaints concluded	**No. of complaints**	
	Before JO in Shamshuipo district in 2004	**Under JO for the whole territory during our study period**
Complaints concluded	609	11,371
Complaints screened out[1]	97	5,584
Complaints investigated	512 [100%]	5,787 [100%]
(Source identified) [success rate]	(73) [14%]	(3,103) [54%]
(Seepage ceased)	(54) [11%]	(2,586) [44%]
(Source not identified)	(385) [75%]	(98) [2%]

Source: JO

[1] *Since its establishment, JO has adopted the new criteria of screening out complaints with dry marks only or moisture content below 35, by formalising previous screening practice.*

1

INTRODUCTION

BACKGROUND

1.1 Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or water wastage, Government has a statutory responsibility to intervene.

1.2 The departments concerned are the Food and Environmental Hygiene Department ("FEHD"), the Buildings Department ("BD"), the Water Supplies Department ("WSD") and since mid-2006, the Joint Office of BD and FEHD ("JO") was set up for better interdepartmental coordination[1].

1.3 The handling of seepage matters has been a perennial source for complaint. The Ombudsman has expressed concern in her Annual Reports since 2003. However, complaints about the issue continue even after the establishment of JO. Increasingly, complaints are directed at JO's operation and procedures, indicating a need for improvement.

1.4 On 5 July 2007, The Ombudsman announced, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397, a direct investigation into Government's arrangements for handling water seepage complaints.

---

[1] *After a pilot JO set up in December 2004 in one district, the JO was extended in mid-2006 to the whole territory.*

AMBIT

1.5 This direct investigation covers:

- the responsibilities of FEHD, BD, WSD and JO in handling water seepage complaints;
- the current procedures and practices of these departments and JO for handling such complaints; and
- their effectiveness in handling such complaints.

METHODOLOGY

1.6 We have studied relevant papers, statistics and case files of FEHD, BD, WSD and JO. Members of the public were invited to give comments and suggestions from 5 July to 6 August 2007.

REPORT

1.7 We are aware that Government is reviewing the operation of JO and hope that this study will assist that exercise.

1.8 The draft investigation report was sent to FEHD, BD, WSD and JO for comments on 6 March 2008. This final report, incorporating the comments of the departments and JO, was issued on 31 March 2008.

2

GOVERNMENT RESPONSIBILITY

2.1 Maintenance of private property is the responsibility of property owners. Water seepage is often a maintenance problem which owners have to deal with themselves. In practice, owners sometimes have difficulties in obtaining neighbours' cooperation and turn to Government for assistance. By law, Government intervention is necessary if seepage leads to the three situations outlined below.

Public Health Nuisance

2.2 FEHD deals with public health nuisances under the Public Health and Municipal Services Ordinance, Cap. 132 ("PHMSO"), which confers on FEHD:

- power to issue notices requiring the abatement of nuisances (section 127); and
- power of entry (section 126).

2.3 Section 12 specifies the types of nuisance to be abated. These include vessels or premises in a state of nuisance; animals or birds kept in such a manner as to be a nuisance; and water tanks or containers, waste or rainwater pipes, or sanitary convenience in a state of nuisance; but there is no further definition as to what amounts to nuisance.

2.4 Under the JO scheme, BD officers in JO are delegated with authority to issue nuisance notices and to enter premises under PHMSO.

Building Safety Risks

2.5 The Buildings Ordinance, Cap 123 ("BO"), confers on BD powers to issue orders to owners:

- requiring the demolition or alteration of unauthorised building works (section 24);
- to make safe dangerous buildings (section 26);
- requiring investigation into and remedial works for building defects (section 26A); and
- requiring investigation into and remedial works for drainage defects (section 28).

2.6 However, these powers are intended to "make provision for the rendering safe of buildings and land" (Long Title of BO). In the context of seepage, these powers can only be exercised to tackle serious cases distressing building safety.

Wastage of Water

2.7 Where wastage of potable water or flushing water is involved, WSD is empowered under the Waterworks Ordinance, Cap 102 ("WO"), to:

- issue notices requiring repairs in case of wastage of water (section 16); and
- enter the premises (section 12).

Other Seepage Complaints

2.8 Government has no legal powers to enforce against seepage cases that do not constitute public health nuisance, building safety risks or wastage of water. In these cases, JO can only try to assist the complainant by issuing advisory letters to the parties responsible and, where deemed appropriate, mediating between the parties responsible and the complainant.

3

HANDLING OF SEEPAGE COMPLAINTS: OPERATION ASPECTS

TRIPARTITE ARRANGEMENT

3.1 Before JO, water seepage complaints were handled under the Tripartite Arrangement. FEHD acted as the first contact point and would usually conduct a Colour Water Test to identify any leaks in drainage pipes, usually of the flat immediately above the complainant's flat. If such could not be established, FEHD would refer the matter to BD and WSD for further investigation.

3.2 BD would check for any building safety risks mainly through visual examination. At the same time, WSD would conduct a Water Meter Flow Check to identify any wastage of water. If neither could be established, Government intervention would cease.

3.3 Under the Tripartite Arrangement, the success rate of identifying the source of seepage was only about 14%[2]. To improve this through better interdepartmental coordination, Team Clean proposed the JO idea as one of the post - SARS initiatives in its "Report on Measures to Improve Environmental Hygiene in Hong Kong" issued in August 2003.

JO SCHEME

3.4 In December 2004, a pilot JO was set up in Shamshuipo. It comprised staff from BD and FEHD, but not WSD as Government considered that WSD had a limited role to play in seepage complaints[3].

3.5 To provide a one-stop service, JO is assigned the following functions:

- it is to have the legal authority of FEHD and the building survey expertise of BD;
- it is to coordinate enforcement action;
- it is to outsource seepage investigation to private survey firms to relieve BD to focus on priority tasks; and
- it is to publish a set of comprehensive guidelines to educate the public on the roles and responsibilities of the parties involved in seepage cases, including flat owners and building managers; and to give technical advice to flat owners on the causes of seepage, possible detection and prevention measures and common repair methods.

---

[2] *(a) Figure supplied by JO as the success rate of investigation in Shamshuipo district in 2004 under the Tripartite Arrangement.*

(b) JO's formula for calculating success rate is: $\frac{A}{A + B + C} \times 100\ \%$

where
A = complaints with source identified
B = seepage ceased and source yet to be identified
C = source not identified

(c) The calculation of 14% is given below:

$$\text{Success rate} = \frac{73}{73 + 54 + 385} \times 100\ \% = 14\ \%$$

[3] *From para. 4.86 of Team Clean's Report on Measures to Improve Environmental Hygiene in Hong Kong, August 2003.*

3.6 During the first three quarters of 2005, the pilot JO identified the source of seepage in 68% of the investigated complaints[4]. In light of this increase in success rate, Government extended the scheme to cover all 19 districts in the territory in mid-2006 for three years. At the time of writing, together with FEHD, BD is carrying out an interim review of the scheme.

INVESTIGATION PROCEDURES

3.7 The increase in success rate was attributed to the introduction of additional investigative methods and more advance technology. In 2003, BD commissioned a consultancy study to carry out thorough research to explore technology and testing methods for the investigation of water seepage. The recommended methods have been introduced and developed since the commencement of the pilot JO scheme into the current testing procedures and methods. To identify the source of seepage, JO employs various investigative methods for different suspected sources of seepage:

- drains and sanitary fitments: Colour Water Test;
- floor slab and roof: Ponding Test;
- external wall: Moisture Content Monitoring Test and sometimes Infrared Scan to help deduce source of seepage; and
- water supply pipes: Reversible Pressure Test (for both potable and flushing water) and Water Meter Flow Check in suspected unit (for potable water only).

A description of these tests is provided in **Annex 1.**

3.8 JO investigates seepage complaints in three stages. Stage I is a screening process by FEHD staff while Stages II and III are respectively attempts by FEHD and BD staff to identify the source of seepage.

---

4 *Figure supplied by JO and calculated according to its formula in para. 3.3.*

The calculation of 68% is given below:

$$\text{Success rate} = \frac{A}{A + B + C} \times 100\ \%$$

$$= \frac{252}{252 + 110 + 8} \times 100\ \%$$

$$= 68\ \%$$

Stage I: Confirmation of Water Seepage Nuisance

3.9 Stage I comprises visual inspection and moisture measurement with an electronic device. Since the operation of JO, the screening practice has been formalised to ensure effective and productive use of resources. According to JO's screening criteria, complaints with dry water marks or moisture content below 35 are screened out, as are complaints where the complainant's own flat or unauthorised building works constitute the source. Other complaints will be screened in for Stage II investigation.

Stage II: Initial Investigation

3.10 At Stage II, FEHD staff in JO will try to identify the source of seepage with Colour Water Test; Moisture Content Monitoring Test; Water Meter Flow Check and Reversible Pressure Test depending on the suspected source.

3.11 If such tests fail to identify the source, Stage III will be initiated.

Stage III: Professional Investigation

3.12 At Stage III, BD staff in JO or JO(BD)'s consultants mainly conduct Ponding Test and Reversible Pressure Test. Where warranted, some Stage II tests will be repeated. Water Meter Flow Check and Infrared Scanner may sometimes be used.

3.13 If all the tests conducted fail to identify the source, JO can take no enforcement action and will classify the case as "unsuccessful". The complainant will be advised accordingly.

ENFORCEMENT PROCEDURES OF JO

3.14 Where the source of seepage is identified and enforcement action under PHMSO is considered appropriate, JO will institute proceedings:

- JO will first issue a warning letter to the liable party demanding repair; and
- if there is no positive response from the liable party within two

weeks and no sign of improvement, JO may issue a nuisance notice. Depending on the scale of repair required, JO will allow two to four weeks for abatement.

Where enforcement action under BO and WO is considered appropriate, the case will be referred to BD (meaning BD Headquarters) and WSD.

3.15 In this regard, the three departments do not always agree on the appropriate enforcement action. In fact, of the main sources of seepage, **drainage pipes** are the only area on which the departments agree: that BD is to enforce against major drainage defect and FEHD against minor and local drainage defects.

3.16 On seepage through **floor slabs** from such sources an overflowing basin, JO currently takes enforcement action relying on PHMSO. However, FEHD considers that BD should treat it as building defects and issue repair orders under BO.

3.17 Seepage through **roof/external wall** usually involves rainwater, which FEHD considers natural and should have little, if any, public health implication. FEHD suggests that this kind of seepage is caused by defects in the building envelope for which BD should issue repair orders under BO. BD, again, considers that unless the defects have caused structural distress, nuisance notices should be issued instead.

3.18 On seepage from **water supply pipes**, each of the three departments has a different view:

- WSD considers that enforcement is for FEHD under PHMSO, unless the leakage is so serious as to amount to wastage of water, indicated by--
  - visible leak from water supply pipe; or
  - positive Water Meter Flow Check results; or
  - observable water dripping at seepage location and positive Reversible Pressure Test results under the condition that dripping rate reduces drastically upon closure of the water supply stopcock and restores to the original level after resumption of water supply.

- Where the source is potable water, FEHD considers that this does not constitute public health nuisance and, therefore,

enforcement under PHMSO is inappropriate.

- BD considers that enforcement can be under either WO or PHMSO.

Enforcement against Multiple Owners

3.19 Where the point of water entry is the communal part of a building under multiple ownership, e.g. external wall or roof, JO will not take enforcement action but will only advise the complainant to coordinate with the co-owners or Incorporated Owners of the building to abate the nuisance.

3.20 JO has rationalised this approach as follows:

- enormous effort and resources are required to ascertain responsibilities for carrying out repair (e.g. checking the Deed of Mutual Covenant) and identifying and serving nuisance notices on all owners concerned; and
- it would be odd for the complainant, as an owner/occupier having a share of the collective responsibility of repairs, to be served a nuisance notice.

STATISTICS ON INVESTIGATION AND ENFORCEMENT

3.21 During the first 12 months of JO's full operation from July 2006 to June 2007 ("our study period"), JO identified the source of seepage in 54%[5] of the cases investigated, with the following distribution:

- drainage pipes and sanitary fitments (33% of cases)
- floor slab (28%)
- roof/external wall (18%)
- water supply pipes (12%)
- other causes, e.g. renovation and window frame leakage (9%)

---

5 *Figure supplied by JO, and calculated according to its formula in para. 3.3. Details of the calculation of 54% is given in para. 3.22.*

3.22 The following table gives details of the calculation of the success rate:

Breakdown of complaints concluded	No. of complaints	
	Under Tripartite Arrangement in Shamshuipo district in 2004	Under JO's scheme for the whole territory during our study period
Complaints concluded	609	11,371
Complaints screened out	97	5,584
Complaints investigated	512 [100%]	5,787 [100%]
(Source identified) [success rate]	(73) [14%]	(3,103) [54%]
(Seepage ceased)	(54) [11%]	(2,586) [44%]
(Source not identified)	(385) [75%]	(98) [2%]

Source: JO

3.23 During our study period, JO issued a total of 487 nuisance notices under PHMSO, BD Headquarters issued 17 repair orders under BO and WSD issued 33 repair notices under WO. It should be noted that these enforcement figures and the number of complaints in **para. 3.22** represent actions taken during our study period and do not necessarily relate to the same complaints. Although statistics are kept on cases enforced by nuisance notices under PHMSO, no statistics are kept by JO to monitor cases enforced by BD and WSD.

3.24 During our study period, the time taken by JO in handling seepage complaints is given below:

	Shortest time taken	Average time taken	Longest time taken
Investigation	3 days	146 days	845 days
Enforcement (from identification of source to issue of nuisance notice)	7 days	57 days	252 days

Source: JO

ENTRY INTO PREMISES

3.25 Entry into suspected premises is crucial to the investigation of seepage

cases. For unresponsive or uncooperative parties who refuse to grant access, both FEHD and BD staff in JO are delegated with statutory powers of entry under section 126 of PHMSO. JO has provided guidelines for staff on the exercise of these powers[6]:

(i) if an initial visit is unsuccessful, the staff should leave a **Notice of Appointment** requesting the notified party to contact the staff to arrange a visit;

(ii) if there is no response after seven working days, the staff should pay a second visit to the premises and leave a **Notice of Intended Entry** giving a date for the next visit, which should be within the next three working days;

(iii) if the third visit is still unsuccessful, the staff should reconfirm the need for entry and then leave a **Notice of Intention to Apply for a Warrant for Entry;** and

(iv) if no response is received after one week, the staff will reconfirm the need for entry and report the case via his senior officers to District Environmental Hygiene Superintendent to consider the need to apply to a Magistrate for a **Warrant of Entry.**

3.26 The guidelines provide for visits to be made at different hours of the day, including outside office hours, and on Saturdays, Sundays and Public Holidays.

3.27 Not being public officers, JO(BD)'s consultants cannot be delegated with any statutory powers of entry. To guide these consultants in gaining entry to premises where cooperation is not forthcoming, JO(BD) has laid down the following conditions in the consultant contract:

- the consultant should make at least two attempts at different hours of the day to gain access to the suspected premises within two weeks of the date of assignment of the Works Order; and
- if such attempts are unsuccessful, the consultant should report to JO(BD) for assistance.

---

[6] *From FEHD Guidelines in Exercising the Powers of Entry to Premises under section 126, Cap. 132 (received from JO on 13 September 2007).*

3.28 During the study period, the average time taken for entry into suspected premises (counting from the date of the first visit) was 11.5 days and the longest was 215 days.

SEEPAGE CASES IN HOME OWNERSHIP SCHEMES AND TENANT PURCHASE SCHEMES

3.29 JO handles seepage complaints in Home Ownership Schemes and Tenant Purchase Schemes as with private buildings. However, because BD Headquarters has delegated its powers under BO to an independent unit in the Housing Department in respect of these housing schemes, cases identified as involving building safety, major drainage defects or unauthorised building works, normally referred by JO to BD Headquarters for action, will be referred to the Housing Department instead. The figures relating to these housing schemes are relatively low and have been subsumed in JO's statistics.

4

HANDLING OF SEEPAGE COMPLAINTS: MANAGEMENT ASPECTS

ORGANISATION OF JO

District Set-up of JO

4.1 There are 19 District JO offices (see **para. 3.6**) grouped under two Regional JO offices.

Regional JO 1

4.2 Nominally headed by a Professional Officer of BD who may be a Building Surveyor or a Structural Engineer and located in FEHD premises in Eastern district, Regional JO 1 is responsible for the supervision of 12 District JOs:

- combined offices with BD and FEHD staff housed under one roof in FEHD premises are set up in three districts where workload was estimated to be relatively high (viz. Eastern, Wan Chai and Kwun Tong) In each of these districts there is at least one BD Professional Officer looking after the district; and
- "split" offices with FEHD staff stationed in the district concerned and BD staff stationed in Eastern, Wan Chai and

Kwun Tong are set up in nine districts where workload was estimated to be relatively low (viz. Central & Western, Southern, Wong Tai Sin, Islands, Sai Kung, Sha Tin, Tai Po, North and Yuen Long). In these districts one BD Professional Officer has to look after more than one district.

Regional JO 2

4.3 Also nominally headed by a Professional Officer of BD, Regional JO 2 is located in FEHD premises in Kowloon City, supervising seven District JOs:

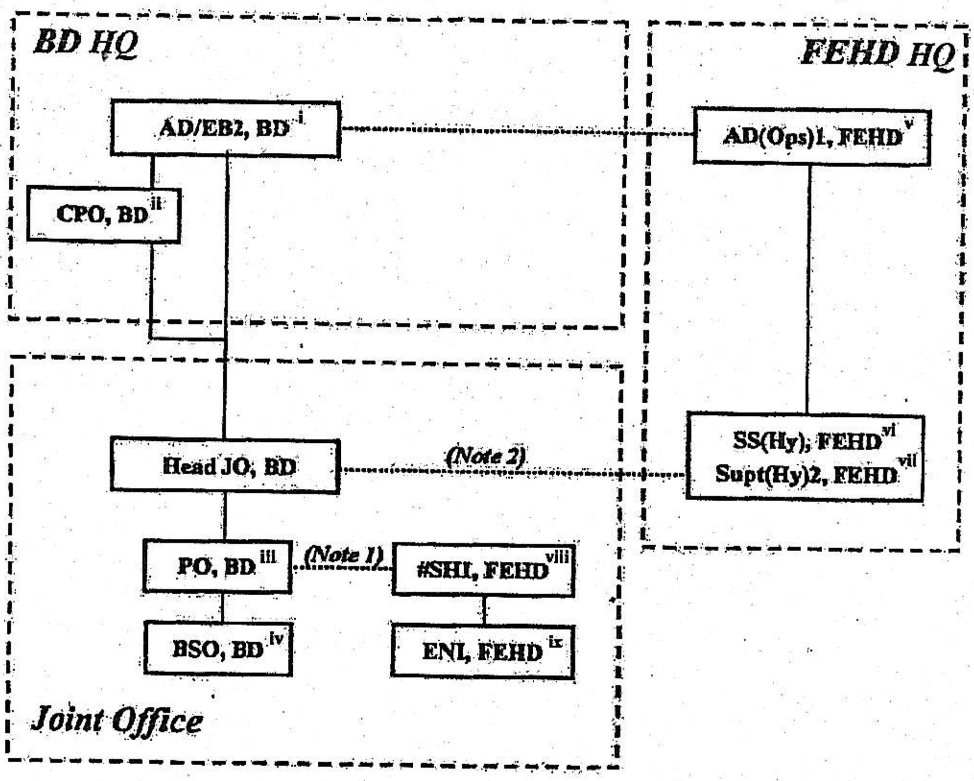
- combined offices are set up in three districts with higher estimated workload (viz. Shamshuipo, Kowloon City and Mong Kok); and
- "split" offices are set up in four districts with lower estimated workload (viz. Yau Tsim, Tuen Mun, Tsuen Wan and Kwai Tsing).

4.4 The organisation and staffing of JO by region and district is shown graphically in **Annex 2**. The total establishment of JO for the two Regional Offices and 19 District Offices as at 10 September 2007 is given below:

	No. of Posts	**Remarks**
Head/Regional JO (Professional Officer, BD)	2	full-time
Professional Officer, BD	10	full-time
Building Safety Officer, BD	48	full-time
Senior Health Inspector, FEHD	35	part-time on seepage matters and part-time on other district environmental hygiene matters
Environmental Nuisance Investigator, FEHD	81	full-time

Reporting System

4.5 FEHD staff in JO **<u>do not</u>** report to the Heads of JO. In fact, BD and FEHD staff in JO have separate reporting systems. The **operational** reporting system is shown in the following chart:



Remarks

\# working on part-time basis.

Note 1: - SHI and ENI of FEHD are responsible for Stage I & II investigation.
- If there is a need for technical support in Stage I and II investigations, ENI / SHI will seek advice from PO.
- If necessary, PO may seek assistance from FEHD in Stage III investigation, e.g. ENI / SHI to render assistance in gaining entry of premises and taking enforcement actions under the Public Health and Municipal Services Ordinance, Cap. 132.

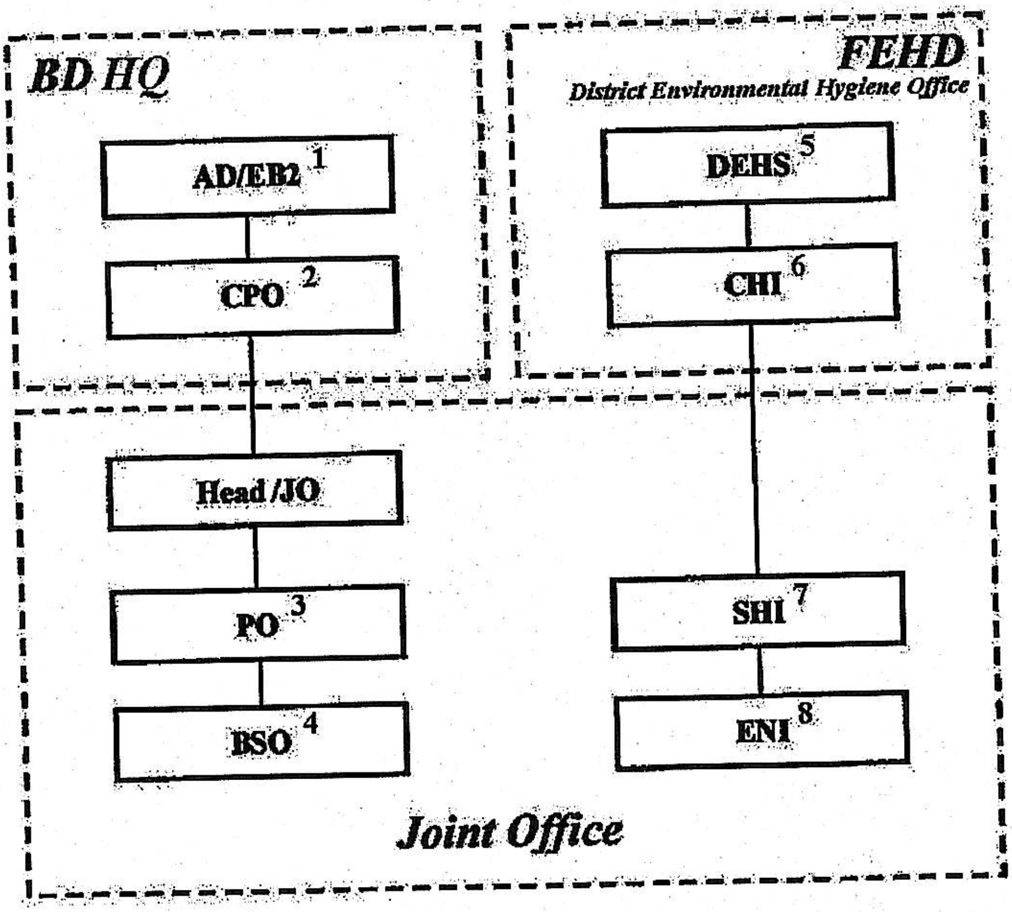
Note 2: Playing a coordinating role in the review of policy matters and procedural guides concerning the operation of Joint Office.

Key:

i	AD/EB2, BD	Assistant Director/Existing Buildings 2, BD
ii	CPO, BD	Chief Professional Officer, BD
iii	PO, BD	Professional Officer, BD
iv	BSO, BD	Building Safety Officer, BD
v	AD(Ops)1, FEHD	Assistant Director (Operations) 1, FEHD
vi	SS(Hy), FEHD	Senior Superintendent (Hygiene), FEHD
vii	Supt(Hy)2, FEHD	Superintendent (Hygiene) 2, FEHD
viii	SHI, FEHD	Senior Health Inspector, FEHD (working on part-time basis)
ix	ENI, FEHD	Environmental Nuisance Investigator, FEHD

Source: Chart received from BD who has incorporated FEHD's input

4.6 The **staff management** reporting system is shown in the chart below:



Key:

1	AD/EB2	Assistant Director/Existing Buildings 2, BD
2	CPO	Chief Professional Officer, BD
3	PO	Professional Officer, BD
4	BSO	Building Safety Officer, BD
5	DEHS	District Environmental Hygiene Superintendent, FEHD
6	CHI	Chief Health Inspector
7	SHI	Senior Health Inspector, FEHD
8	ENI	Environmental Nuisance Investigator, FEHD

Source: Chart received from BD with FEHD's input

4.7 The following may be noted from the two charts:

- FEHD staff in JO do not report to Head/JO on both operational and staff management matters;

- staff management matters such as posting, and transfer of FEHD staff in JO are administered by senior FEHD officers who do not have any role in the operation of JO; and
- for SHIs in JO, even their performance and leave are appraised and approved by senior FEHD officers outside JO.

MANAGEMENT OF CONSULTANTS

4.8 Consultants play an important role in JO's investigative work. During our study period, of the 2,988 cases involving Stage III investigation, 941 cases (32%) were assigned to consultants.

4.9 Since June 2005, JO(BD) has awarded 19 term contracts of not more than 12 months' duration to eight consultants: one contract in 2005, nine to five consultants in 2006, and a further nine to five consultants in 2007. The sum of each contract is capped at $3 million. During the contract period, JO(BD) may issue Works Orders to the consultant; Works Orders not yet completed upon contract expiry will continue up to the completion of the orders.

4.10 There is no provision for renewal. Upon expiry, all contracts are re-tendered. Each consultant may be awarded a maximum of two contracts in each tender exercise.

4.11 To supervise the consultants, the contracts contain the following provisions:

- the consultant shall submit a technical report for each Works Order within six weeks or as instructed by JO(BD);
- the consultant shall submit progress reports every other week; and
- where necessary, JO(BD) may set up working groups to review progress and consider submissions of the consultant. In practice, regular bi-weekly progress report meetings chaired by the two Heads of JO have been set up with each of the consultants for this purpose.

4.12 In the event that the performance of a consultant is unsatisfactory, JO(BD) has in place the following mechanism:

- JO(BD) to issue a warning letter to the consultant drawing attention to the identified shortcomings and calling for remedial actions and improved performance;
- in case of no improvement, JO(BD) to recommend an adverse report for sanction of the consultant under BD's Consultants' Performance Reporting System. The Consultant Review Committee of BD Headquarters may decide to terminate the contract if necessary; and
- under the Consultants' Performance Reporting System, the BD Consultant Review Committee of BD Headquarters to review consultants' performance reports on a quarterly basis. A consultant who is given two consecutive adverse reports will be suspended from bidding for new contracts.

4.13 Between June 2005 and November 2007, JO(BD) has issued 57 warning letters and six adverse reports to its eight consultants employed under the 19 contracts. No consultant has been suspended from tendering for future contracts or has the contract terminated on account of unsatisfactory performance.

5

HANDLING OF SEEPAGE COMPLAINTS: DISPUTE RESOLUTION ASPECTS

5.1 The three situations (see **para. 2.8**) aside, seepage cases that cannot be resolved among property owners are civil disputes. Accordingly, some aggrieved flat owners choose to initiate legal proceedings, which can be expensive and are time-consuming.

5.2 For claims not exceeding $50,000, the aggrieved party may resort to the Small Claims Tribunal. However, he can only claim for damages that he has actually sustained, in this context mainly costs incurred in repairing the defects and making good the walls or ceiling. Where the other party is totally uncooperative, investigation can hardly commence, let alone identifying and repairing the defects and then making claims.

BUILDING AFFAIRS TRIBUNAL

5.3 In light of public demand for a more efficient and effective dispute settlement mechanism for building maintenance and management issues, including water seepage, Government has put forward, amongst other things, a proposal to establish a Building Affairs Tribunal ("BAT") in its document on the "Public Consultation on Building Management and Maintenance" released in January 2005.

5.4 BAT was originally a proposal from the Hong Kong Institute of Surveyors. The purpose is to provide the public with an alternative channel to settle disputes in relation to such matters as water seepage, environmental nuisance, collection and use of management funds, etc. According to the Institute, BAT should be presided by someone who bears both legal and building professional background. Professional advice should also be sought, by the parties in substantiating the cases, where appropriate.

5.5 During consultation, the proposal received considerable support from the public and Legislative Council members. However, the following concerns have been raised:

- the proposal for BAT to dispense with legal representation may give rise to constitutional and human rights implications; and
- the establishment of a new channel for dispute resolution may duplicate efforts and unnecessarily complicate the judicial system.

5.6 In its report on "Public Consultation on Mandatory Building Inspection" released in May 2007, Government undertook to continue to study the feasibility of the BAT proposal, having regard to the various implications.

5.7 At the time of writing of this report Government has not yet completed its study.

6

CASE STUDIES

6.1 JO is intended to improve Government's response to water seepage complaints. We note with concern, therefore, that the number of seepage complaints made to this Office recorded a 70% increase in our study period compared to the previous 12 months.

6.2 We summarise below some illustrative cases.

Case 1

6.3 On 21 March 2005, JO received a seepage complaint concerning a flat and, after some tests, took the following actions:

- issuing an advisory letter to the Owners' Corporation requesting inspection and repair of defects in the external walls; and
- conducting on 4 August 2005 a site visit with WSD to ascertain the ownership of some leaking water supply pipes.

6.4 We note from JO's file that this was followed by a period of 23 months of no activity. There is no file record of the complainant chasing JO either. For some unknown reason, JO staff "reactivated" the case and contacted the complainant on 13 July 2007, by which time the latter had sold the flat and was willing to withdraw the complaint, whereupon the case was concluded.

6.5 It can be observed from this case that JO did not have an effective monitoring system for progress with handling seepage complaints.

Case 2

6.6 On 29 August 2006, JO received a complaint about water seepage concerning a flat. The source of seepage was identified to be the flat above and a warning letter was issued to the occupant on 20 November 2006. On the same day, a land search was conducted to verify the ownership of the flat in preparation for the issue of a nuisance notice.

6.7 Contrary to JO's guidelines, which require follow-up action in two weeks (see **para. 3.14**), no action was taken in the next seven months. For some unknown reason, JO "reactivated" the case and paid a site visit to the affected flat on 21 June 2007. The seepage situation remained unchanged. As seven months had passed, the ownership of the source flat had to be verified again before a nuisance notice was finally issued on 29 June 2007.

6.8 We note from JO's file that in the seven months concerned (November 2006 to June 2007), three different Environmental Nuisance Investigators of FEHD had taken up the post as action officer. There is no file record of the complainant chasing JO during this period.

6.9 We note from this case:

- non-compliance with JO's guidelines by staff;
- lack of an effective progress monitoring system; and
- frequent changes in JO staff.

Case 3

6.10 On 16 January 2006, JO received a complaint about water dripping in a flat. On the basis of the positive results of a Reversible Pressure Test on water supply pipes, JO referred the case to WSD for follow-up action.

6.11 On receipt of the referral, WSD conducted a Water Meter Flow Check. The results were negative and WSD refused to take enforcement action against wastage of water under WO.

6.12 In May 2006, the flat owner complained to this Office. Our investigation revealed that BD, FEHD and WSD were in disagreement over who

should take enforcement action in the circumstances:

- WSD considered that the results of JO's test did not constitute sufficient evidence of wastage of water to warrant enforcement under WO and suggested that FEHD issue nuisance notice under PHMSO (see **para. 3.18**).
- FEHD considered that dripping of clean water did not justify issue of nuisance notice.
- BD considered that enforcement could be taken under either WO or PHMSO, and the former should be more efficient and effective.

6.13 We asked JO to reconcile the differences promptly. However, the three departments continued their arguments despite numerous reminders from this Office. Finally on 26 June 2007, we demanded resolution within ten days. Thereupon, WSD issued a repairs notice under WO to the owner concerned on 5 July 2007, some 18 months after receipt of the complaint.

6.14 It can be observed from this case that JO's capability to provide an efficient and effective one-stop service was seriously hampered by:

- disagreement among the three departments on who should take enforcement action; and
- failure by JO to resolve interdepartmental disagreement in a timely manner.

Case 4

6.15 A complaint about water dripping in a flat was received on 17 March 2006 by FEHD before the establishment of JO. Following initial investigation, FEHD could not identify the source and passed the complaint to the provisional JO for Stage III investigation under the transitional arrangements. Consultant A was assigned the case on 30 May 2006. Consultant A, after some tests and inspections in July and August 2006, submitted its report to JO(BD) some four months later on 13 October 2006, despite the contractual requirement for technical reports to be submitted within six weeks (see **para. 4.11**).

6.16 The technical report contained numerous errors, including incorrect address, date of inspection and number of bathrooms near the seepage area. Most importantly, the conclusions were unfounded. On 14 November 2006, JO(BD) asked Consultant A to clarify and revise its report for resubmission.

6.17 No action was taken in the next five months. In May 2007, Consultant A resumed further tests and inspections. A revised report was submitted to JO(BD) on 18 July 2007.

6.18 The revised report essentially repeated the same errors and the conclusions were still unfounded. On 20 July 2007, Consultant A was requested to revise and resubmit report again.

6.19 JO(BD) received Consultant A's second revised report four months later on 28 November 2007 (some 18 months after assignment) and subsequently made final reply to the complainant on 13 December 2007.

6.20 In connection with this case, JO(BD) had since July 2006 chased Consultant A at numerous progress meetings, issued five warning letters and one adverse report. However, even in its relatively strongly-worded letter dated 16 October 2007 "requiring Consultant A to submit the revised report with sound conclusion without further delay", JO(BD) did not specify any deadline for resubmission.

6.21 In connection with the two contracts awarded to Consultant A in 2006, 18 warning letters and two adverse reports had been issued. Consultant A imputed its poor performance to staff resignations. BD has not awarded it with any seepage contracts again in 2007.

6.22 We note from this case:

- inefficiency and incompetence of the consultant;
- JO(BD) failed to manage its consultant effectively; and
- JO(BD) made no attempt to intervene or redress an extreme situation.

Case 5

6.23 On 8 September 2006, JO received a complaint about water seepage in a flat. In the next two months, JO(FEHD) made five unsuccessful attempts to visit the flat above and issued seven notices relating to entry, before finally gaining entry on 15 November 2006 (cf. **para. 3.25**).

6.24 The case was subsequently assigned to Consultant B for further investigation. In the meantime, the complainant managed to obtain the agreement of the owner of the flat above to undertake repairs. Repairs were carried out in December 2006 and, after confirming with the complainant that the seepage had ceased, the case was closed in March 2007. A letter to confirm closure of the case was sent by JO(BD) on 9 March 2007 to the complainant with copy to Consultant B.

6.25 Notwithstanding this, Consultant B made five more unsuccessful attempts to contact the complainant during April to August 2007. When Consultant B brought this to JO(BD)'s attention, JO(BD) contacted the complainant again on 12 September 2007 to reconfirm closure of the case. Another confirmation letter was sent by JO(BD) to the complainant on 12 September 2007.

6.26 We note from this case:

- effectiveness and efficiency of resolving seepage cases through private owners' initiative;
- non-compliance with JO guidelines on entry to premises by staff; and
- ineffective management of the consultant.

Case 6

6.27 On 16 December 2006, JO received a complaint about water seepage in a flat. Following Stages I and II investigation, the source could not be identified and Consultant C was assigned the case on 3 March 2007.

6.28 On 30 March 2007, Consultant C visited the flat on the upper floor but no one was at home. On 22 May 2007, Consultant C telephoned the suspected owner who refused to grant entry. On 12 July 2007, Consultant C sought help from JO(BD) in gaining entry into the suspected flat.

6.29 On receiving Consultant C's request for assistance, JO(BD) contacted the suspected owner by phone and still failed to secure entry. On 16 July 2007, JO(BD) requested JO(FEHD) for assistance in gaining entry.

6.30 In the following seven weeks or so, the case was passed back and forth between JO(FEHD) and JO(BD):

- JO(BD) considered that JO(FEHD) should render assistance without delay; and
- JO(FEHD) considered that Consultant C should have tried to visit the suspected flat again first based on its understanding of the contract condition that the consultant should have made at least two attempts to gain access (see **para. 3.27**), and that the information contained in Consultant C's report was unacceptable and had to be updated.

6.31 This went on until 6 September 2007 when agreement was reached at an internal JO meeting that JO(FEHD) should help by arranging to issue a Notice of Intended Entry.

6.32 The following can be observed from this case:

- JO(BD) and JO(FEHD) held different views on the action required of JO(BD)'s consultant before applying for Warrant for Entry by JO(FEHD) ; and
- there was a lack of cooperation and coordination between BD and FEHD staff in JO, which could be attributed to the loose organisational structure of JO and the separate lines of command for BD and FEHD staff.

Case 7

6.33 In May 2007, JO received a complaint about seepage in a unit on the 1/F of a building. The source was identified to be the drainage pipes and waterproofing layer of the upper unit. Owners were notified of the results on 16 August 2007.

6.34 On 27 August 2007, the 1/F owner requested JO for a copy of the seepage test report in order to make a claim to the Small Claims Tribunal. When he chased JO for a reply on 10 September 2007, he was told by JO's action officer (an Environmental Nuisance Investigator of FEHD) that the test report would not be released to him but instead he would be informed of the test results in writing.

6.35 The 1/F owner complained to this Office about JO's refusal to release the seepage report. Upon inquiries, we received the following responses from BD Headquarters and FEHD Headquarters:

- BD Headquarters replied on 22 October 2007 that JO would not release its investigation report to the G/F owner as it contained matters of professional judgment and information relating to another unit, but would instead issue a written reply to the complainant with advice on the test results. As a matter of fact, such a written reply was issued by JO on 27 September 2007.
- FEHD Headquarters replied on 29 October 2007 that it was the usual practice of JO to issue Government Laboratory test reports to complainants upon request. Accordingly, JO had reminded the action officer concerned of this practice, and sent a copy of the Government Laboratory test report to the complainant on 29 October 2007.

6.36 In the end, the complainant received the information he wanted and the defects were repaired. Subsequently, BD Headquarters and FEHD Headquarters initiated discussions on the release of information and investigation reports to the public. At the time of writing, the discussions have not yet been concluded.

6.37 From this case, we observe:

- a lack of coordination between BD and FEHD in handling public requests for JO information and in responding to inquiries from this Office; and
- JO's loose organisational structure and the separate lines of command for BD and FEHD staff in JO.

7

RECENT DEVELOPMENTS

7.1 JO is undergoing an interim review (see **para. 3.6**). Meanwhile, it has already introduced certain improvement measures.

Operational Timelines

7.2 In view of the lack of operational timelines, JO has recently introduced the following improvement measures:

- Since August 2007, JO would issue a "Note to Owners" to complainants and occupiers/owners of premises suspected to be "source", upon receipt of seepage complaints, to inform them of JO's scope of services, investigation methods and procedures, and the anticipated timeline for completion of an investigation.
- JO has established major milestones for monitoring progress in Stage III. Staff are required to contact parties concerned, conduct site visits, etc within prescribed timelines. Cases overshooting the milestones will be subject to monitoring.

7.3 Moreover, JO intends to introduce a working guideline to inform complainants regularly of progress.

Entering Suspected Premises

7.4 To expedite and simplify the process of entry into premises, JO and FEHD have recently introduced a number of improvement measures as follows:

- to improve the service, JO staff will post the Notice of

Appointment on a conspicuous part of the premises concerned, in addition to inserting a copy into the mailbox;

- It has been the practice for JO(FEHD) to perform all necessary tasks in four steps in exercising the power of entry. Recently, to expedite the application for "Warrant of Entry", JO(BD) will serve "Notice of Appointment", "Notice of Intended Entry" and "Notice of Intention to Apply for Warrant of Entry" on site immediately if JO(BD) is unable to gain entry, whilst JO(BD)'s consultant will serve a notification letter on site during Stage III investigation;
- JO(BD) has developed a standard checklist to ensure all requisite information has been obtained and procedures have been followed before referral to JO(FEHD); and
- FEHD has reviewed and revised its guidelines with emphasis on taking prompt and decisive action to gain entry in cases where the parties involved are uncooperative.

Management and Monitoring of Consultants

7.5 JO(BD) has been exploring ways to strengthen its management of consultants. In the contracts awarded in 2007, conditions have been revised and tightened so as to give the consultants a better understanding of what is required of them in respect of administration of tests and entry into premises. CPO/BD of BD Headquarters has recently set up bi-monthly meetings with the consultants to enhance monitoring.

7.6 JO(BD) also intends to introduce the following measures:

- to set timeline for the major deliverables in future contracts;
- to require consultants to submit a standardised report for monitoring;
- to require consultants to submit a standardised record of contacts/visits to premises; and
- to standardise the format of warning letters to draw consultants' attention clearly to their unsatisfactory performance.

8

OBSERVATIONS AND OPINIONS

8.1 Seepage is essentially a matter of building management and maintenance. It should be best resolved through private owners' initiatives (see **Case 5**). However, under certain circumstances, Government intervention is necessary. However, even after the setting up of JO and the relative success it has over the previous Tripartite Arrangement, the handling of water seepage complaints has deficiencies in operation and in management. JO has yet to achieve the "one-stop service" intended, largely due to Government's unclear, and therefore unsatisfactory, administrative arrangements.

8.2 Based on our study of the handling mechanism and cases, we have identified the following deficiencies:

- Difficulty in identifying source of seepage;
- insufficient operational timelines;
- difficulty in entering premises suspected to be "source";
- disagreement over departmental enforcement responsibilities;
- divergent interpretation of "nuisance";
- failure to enforce against multiple owners;
- deficiency in JO's management information for enforcement;
- disjointed organisational structure of JO;
- need for a formal head, as opposed to a nominal lead department;
- frequent turnover of JO staff;

- ineffective management and monitoring of consultants;
- short duration of consultant contracts; and

PROBLEMS IN INVESTIGATION OF SEEPAGE COMPLAINTS

Difficulty in Identifying Source of Seepage

8.3 Despite public skepticism over JO's tests and techniques, we note that JO has enhanced considerably Government capability in investigation since its establishment. Under the Tripartite Arrangement, FEHD's tests were confined mainly to the Colour Water Test. With BD as "lead" department, JO has adopted different tests for different suspected sources and has extended its techniques to include the use of such advance instrument as Infrared Scanner (see **para. 3.7**).

8.4 We note that the success rate of investigation as calculated by JO has risen significantly from 14% under the Tripartite Arrangement to 54% for our study period (see **para. 3.22**). However, the comparison is not like with like: JO's formula does not take into account complaints screened out, which increased substantially with the introduction of new screening criteria since the establishment of JO (see **para. 3.9**).

8.5 Besides, a high proportion of the cases unsolved are those regarded as having "ceased", where seepage has stopped but the source has yet to be identified (see **para. 3.22**). Some such cases have been repaired by the owners' action but it is also quite common for seepage to dry out temporarily and then recur. Some cases "ceased" are, therefore, a potential source of dissatisfaction among complainants.

8.6 JO has not been able to identify the source in 98 cases in the 12-month study period (see **para. 3.22**). The "highly improved" success rate, while encouraging, is no cause for complacency. JO must explore ways to further improve its investigative capability and techniques.

Insufficient Operational Timelines

8.7 While investigation of seepage could be (and often is) time-consuming, there is need to improve JO monitoring of the progress of its cases. This need is well underlined by the long lapses of inaction by JO staff in **Case 1** (23 months) and **Case**

2 (seven months) and by JO(BD)'s consultant in **Case 4** (five months).

8.8 Examination of JO's operational guidelines reveals that there were no target timelines or performance pledges for most of the tasks. There was also no stated requirement in JO's guidelines to inform complainants of progress. This should be rectified for proper customer service.

8.9 We commend JO's recent improvement measures (see **paras. 7.2-7.3**); but consider that, in addition:

- JO should establish milestones also for monitoring progress in Stages I and II; and
- such milestones for all Stages should be translated into performance pledges for compliance and public information.

Difficulty in Entering Premises Suspected to be "Source"

8.10 Practical difficulty in gaining entry often causes delays in investigation. During our study period, the longest time taken to gain entry was seven months (see **paras. 3.28**). Apparent reluctance to seek a Warrant of Entry compounds the problem.

8.11 We see in some cases, repeated unproductive visits were made and JO staff still did not initiate action for a Warrant of Entry. We fully understand that powers of entry must be exercised with due care. However, this cannot be an excuse for delay or inaction leading to inordinate deferment of action (see **Case 5**).

8.12 Difficulty in gaining entry is sometimes compounded by problems of interface among the different parties responsible for different steps in exercising the powers of entry (see **para. 3.25**). In **Case 6**, JO(FEHD) and JO(BD) disagreed on whether sufficient information had been obtained by the consultant and whether the requisite procedures had been followed before referral to JO(FEHD) for follow-up action on applying for a Warrant of Entry. Frankly, it is difficult for us to accept, and for the public to understand, how and why JO should seem to be "split" when it is supposed to have been a **joint** BD/FEHD effort.

8.13 We are pleased to see recent improvements (see **para. 7.4**). However, we consider that:

- JO should review the guidelines for entry, with particular focus on clarifying (for staff and consultants) interpretation of the requirements and improving the interface among all parties concerned;
- JO staff should take prompt, proactive and decisive action in exercising their statutory powers of entry; and
- JO should establish a system for monitoring progress to guard against delays.

PROBLEMS IN ENFORCEMENT

Disagreement over Enforcement Responsibilities

8.14 In the best-case scenario, successful investigation is resolved by repairs of the owners' volition, or after an advisory letter and some persuasion. Where the liable party is not responsive or not cooperative, the expectation is that JO would take enforcement action. However, we observe that the process of enforcement is often fraught with problems: e.g. dispute over departmental enforcement responsibilities, different interpretation of "nuisance" and failure by JO to action against multiple owners. Enforcement took over eight months in the worst case during our study period (see **para. 3.24**).

8.15 Although JO is to coordinate enforcement (see **para. 3.5**), failure of FEHD, BD and WSD to agree on their enforcement responsibilities (see **paras. 3.15-3.18**) has deferred and even hindered action. Some cases have dragged on for an inordinately long time (18 months of disagreement in **Case 3**).

8.16 At present, two major factors hinder the resolution of differences of departmental views:

- absence of a formal lead department with real authority for JO (see **paras. 4.5-4.7**); and
- supervision of the three departments involved by two separate

bureaux[7].

8.17 Our recommendations below on the restructuring of JO under one properly designated lead department should remove these hindrances. Agreement on enforcement responsibilities is so crucial to JO's efficiency that departmental differences in this regard should be resolved as a matter of priority. Unless JO can be restructured expeditiously, the departments, together with their bureaux if necessary, should work out some mechanism to resolve their differences on enforcement responsibilities for the interim.

Divergent Interpretation of "Nuisance"

8.18 Departmental disagreement, or uncertainty, over responsibilities is complicated by the diverse interpretation of "nuisance". While FEHD excludes seepage of rainwater or potable water from nuisance cases, BD and WSD tend to treat seepage cases not enforceable under BO and WO as nuisances enforceable by FEHD under PHMSO.

8.19 To resolve this, FEHD should develop a clear, precise and publicly defensible definition of "nuisance". It should establish practical guidelines for staff on the issue of nuisance notices.

Failure to Enforce against Multiple Owners

8.20 JO has a statutory responsibility to issue notices for abatement of nuisances, whether the liable party is a single owner or multiple owners. This responsibility does not diminish in cases where the complainant is one of the multiple owners; nor is resource constraint a good reason for not taking enforcement action where such is warranted (see **para. 3.20**). While we accept adopting the advisory approach first, we consider that JO should proceed to enforcement action once advisory measures do not achieve results.

Deficiency in JO's Management Information on Enforcement

8.21 Although JO is tasked to coordinate enforcement action on seepage complaints, it has adopted the success rate of investigation as the main measure of its performance. In particular, no comprehensive statistics are kept to monitor the

---

[7] *FEHD is under Food and Health Bureau and BD and WSD under Development Bureau.*

eventual outcome after the source of seepage has been successfully identified (see **para. 3.23**). This is a serious gap in management information which needs to be filled. For JO to monitor adequately its performance in coordinating enforcement action, we consider it necessary to keep track of the outcome of all successful investigations and execution of remedial or enforcement action; and, if such is not effected, the reasons for it. Such data should assist in devising improvement measures.

PROBLEMS IN MANAGEMENT OF JO

Disjointed Organisational Structure of JO

8.22 A major reason for the problems in investigation and enforcement is JO's deficient organisational structure. <u>Firstly</u>, given that 12% of seepage cases are related to water supply pipes (see **para. 3.21**), excluding WSD from JO (see **para 3.4**) makes enforcement in these cases incomplete, and even difficult. In **Case 3**, for instance, WSD would not accept JO's investigation results.

8.23 <u>Secondly</u>, out of the 19 District JOs, 13 are "split" JOs where BD and FEHD work in separate offices (see **paras. 4.1-4.3**). Such *modus operandi* is not conducive to efficient internal communication or *esprit de corp*, and may cause confusion to the public. In this regard, JO has recently rearranged its transportation routes in an attempt to shorten the file movement time between regional and district offices to two working days.

Need for Formal Head

8.24 <u>Thirdly</u>, without a department formally designated as head of JO with proper authority over staff, JO is a loose assortment of BD and FEHD staff in uneasy partnership with separate reporting systems both in operation and staff management (see **paras. 4.5-4.7**). Neither BD nor FEHD is in a position to exercise proper authority over JO staff and matters, or to take full responsibility for JO's performance. Furthermore, the loose organisation is hardly conducive to the two grades of staff working together efficiently or communicating effectively and cultivating a mutual bond in service (see **Cases 6 and 7**).

8.25 To facilitate coordination and improve efficiency, we urge the three departments, together with their bureaux if necessary, to review seriously the organisation and staffing of JO. There is a need to designate a department to be the acknowledged head of JO with formal authority and clear lines of command over staff and office management.

8.26 In this connection, reference should be made to the organisational structure of the Office of the Licensing Authority ("OLA") in operation under the Home Affairs Department ("HAD") since 1999. Responsible for the issue of licences for hotels, guesthouses and private clubs under various Ordinances, OLA is headed by a Chief Officer/Licensing Authority and staffed by officers from HAD, BD and Fire Services Department ("FSD"). Staff seconded from BD and FSD to HAD report to the Chief Officer/Licensing Authority in both day-to-day operation and staff management.

Frequent Turnover of JO Staff

8.27 Frequent turnover of staff is another reason leading to inefficient operation and long delays (see **Case 2**). The frequent turnover is not fair both to the staff and to JO as an organisation, and has caused confusion to the public. While the causes of this phenomenon are many and diverse, FEHD considers that the high wastage of ENIs is a factor. Another factor may be the fact that decisions on postings and transfers of FEHD staff in JO are made by FEHD officers not responsible for the operation of JO. Designation of a formal head of JO with authority for staff (see **paras. 8.24-8.26**) should help in this regard.

PROBLEMS IN CONSULTANT MANAGEMENT

Ineffective Management and Monitoring of Consultants

8.28 As the office employing the consultants, JO(BD) must manage them effectively. However, despite its monitoring effort (see **paras. 4.11-4.13**), the results achieved by some consultants often leave much to be desired. For example:

- In **Case 4**, despite the contractual requirement to submit the technical report within six weeks and the many verbal and written reminders issued by JO(BD), Consultant A took four

months to submit its initial report, 13 months to submit its revised report and 18 months to submit its second revised report. Despite the bi-weekly progress meetings, there were five months of total inaction by Consultant A. Meanwhile, JO(BD) failed to give any deadline in its warning letter to Consultant A.

- **Case 5** was even more inconceivable: while JO(BD) and Consultant B were holding bi-weekly meetings to review the progress of individual cases, Consultant B tried to contact the complainant for five months after JO(BD) had closed the case.

Short Duration of Consultant Contracts

8.29 One of the causes of the poor performance of some consultants could be the short duration of their contracts (maximum 12 months). We appreciate that the short duration has the advantage of giving JO greater flexibility in revising contract conditions and in getting rid of non-performing consultants. On the other hand, the short duration often means that by the time the consultant and his staff have gained sufficient knowledge and experience in the work, the contract is coming to an end. Moreover, it is relatively difficult for the consultant to recruit and retain good staff under short contracts without certainly of continuation or renewal.

8.30 Given the new initiatives (see **paras. 7.5-7.6**), we consider that:

- JO(BD) should be more vigilant and more outcome-oriented in its operational monitoring of seepage consultants, including -
  - being more alert and watchful in vetting the progress reports of consultants and in regular progress meetings with consultants; and
  - setting deadlines in its reminder and warning letters to consultants and requiring them to keep to deadlines;
- in cases of significant under-performance or serious delay, JO(BD) should intervene to redress the situation; and
- JO(BD) should consider granting contracts of longer duration to consultants with proven track record.

PROBLEMS IN DISPUTE RESOLUTION

8.31 Seepage is basically a matter of building management and maintenance for private property owners themselves. Some property owners do solve their seepage problems through their own efforts, often with the cooperation of their neighbours. Many come to JO for assistance or demand Government remedy, and others choose to take legal proceedings.

8.32 One constraint on JO's ability to assist owners is that there is simply no legal basis for taking action in certain circumstances (see **para. 2.8**). In these cases, while JO's efforts to help are laudable, their effectiveness depends on the cooperation of the liable party. Regrettably, the results are often not satisfactory.

8.33 Where legal proceedings are concerned, the existing channels for dispute resolution have disadvantages as follows:

- The courts could be expensive both in terms of time and money.
- The Small Claims Tribunal can handle cases only where damage has actually been sustained and the claim does not exceed $50,000. It is particularly not useful in cases where the party suspected to be the source of seepage does not allow investigation or facilitate repairs.

8.34 This clearly points to the need for a more effective and efficient avenue for resolving seepage disputes. Government should pursue its BAT proposal (see **paras. 5.4-5.6**). Furthermore, we consider that the new tribunal should have the following two key features:

- it should have simple procedures and legal representation should be disallowed[8]; and
- it should be empowered to order investigation as well as repairs.

---

[8] *Reference may be drawn to section 19 of the Small Claims Tribunal Ordinance, Cap. 338 and section 23 of the Labour Tribunal Ordinance, Cap. 25, which provide that no barrister or solicitor, unless himself a claimant or defendant, shall have a right of audience before the tribunals.*

9

RECOMMENDATIONS

9.1 Seepage is particularly problematic for households in multi-storey buildings. Even in its mildest form, seepage is an eyesore and a source of irritation. In the more serious cases, seepage can become a health hazard or a building safety risk. Most exasperating is that often one has to rely on a neighbour's goodwill and cooperation to identify the source and effect repairs.

9.2 A matter of building management and maintenance properly the onus of owners and for resolution through the owners' cooperation, water seepage calls for Government intervention under some circumstances. Government initiative is commendable in setting up JO as a one-stop service and in exploring ways for improving its operation. For further improvement, The Ombudsman makes the following recommendations:

Investigation of Seepage

(1) JO to explore ways to further improve its investigative capability and techniques (see **paras. 8.3-8.6**).

Work procedures of JO

(2) JO to establish milestones for monitoring progress not only for Stage III investigation but also for Stages I and II (see **paras. 8.7-8.9**).

(3) JO to develop its internal milestones into performance pledges for public information (see **para. 8.9**).

Entry into premises

(4) JO to review the guidelines for entry with particular focus on clarifying for staff and consultants interpretation of the requirements and improving the interface between the different parties concerned (see **paras. 8.10-8.13**).

(5) JO staff to take prompt, proactive and decisive action in exercising their statutory powers of entry (see **para. 8.13**).

(6) JO to establish a system for monitoring progress to guard against delays (see **para. 8.13**).

Disagreement over Enforcement Responsibilities

(7) BD, FEHD and WSD, together with their bureaux if necessary, to work out some mechanism to resolve their differences on enforcement responsibilities (see **paras. 8.14-8.17**).

Interpretation of "Nuisance"

(8) FEHD to develop a clear, precise and publicly defensible definition of "nuisance" (see **paras. 8.18-8.19**).

(9) FEHD to establish practical guidelines for staff on the issue of nuisance notices (see **para. 8.19**).

Enforcement against Multiple Owners

(10) JO to take enforcement action against multiple owners where warranted once advisory measures do not achieve results (see **paras. 8.20**).

Improving JO's management information on enforcement

(11) JO to improve its management information by maintaining comprehensive statistics on the outcome of successful

investigations and execution of remedial or enforcement action (see **para. 8.21**).

Organisational Structure of JO

(12) BD, FEHD and WSD, together with their bureaux if necessary, to seriously review the organisation and staffing of JO with a view to designating a department to be the acknowledged head of JO with formal authority and clear lines of command over staff and office management (see **paras. 8.25**).

(13) As part of the review in (12) above, consideration should be given to including WSD as part of JO operation (see **para. 8.22**).

Management of Consultants

(14) JO to be more vigilant and more outcome-oriented in its operational monitoring of its seepage consultants (see **paras. 8.28**).

(15) In cases of significant under-performance or serious delay, JO to intervene to redress the situation (see **para. 8.28**).

(16) JO to consider granting consultant contracts of longer duration (see **paras. 8.29-8.30**).

Resolution of Disputes on Building Management and Maintenance

(17) BD to discuss with its bureau on according priority to the BAT proposal (see **paras. 8.31-8.34**).

10

FINAL REMARKS

COMMENTS FROM BD, FEHD, WSD AND JO

10.1 We have studied the comments of BD, FEHD, WSD and JO on our draft investigation report. Where appropriate, we have incorporated them into the text.

10.2 All parties have generally accepted our recommendations and undertaken to pursue them in collaboration with one another and, where necessary, with their bureaux.

FINAL REMARKS FROM THE OMBUDSMAN

10.3 The Ombudsman is grateful to the Director of Buildings, the Director of Food and Environmental Hygiene, the Director of Water Supplies and their colleagues for cooperation throughout the investigation. In particular, we appreciate the prompt and positive response to our findings and recommendations.

10.4 We will monitor progress of their implementation.

Office of The Ombudsman
Ref. OMB/DI/126
March 2008

ANNEXES

Annex 1
(para. 3.7)

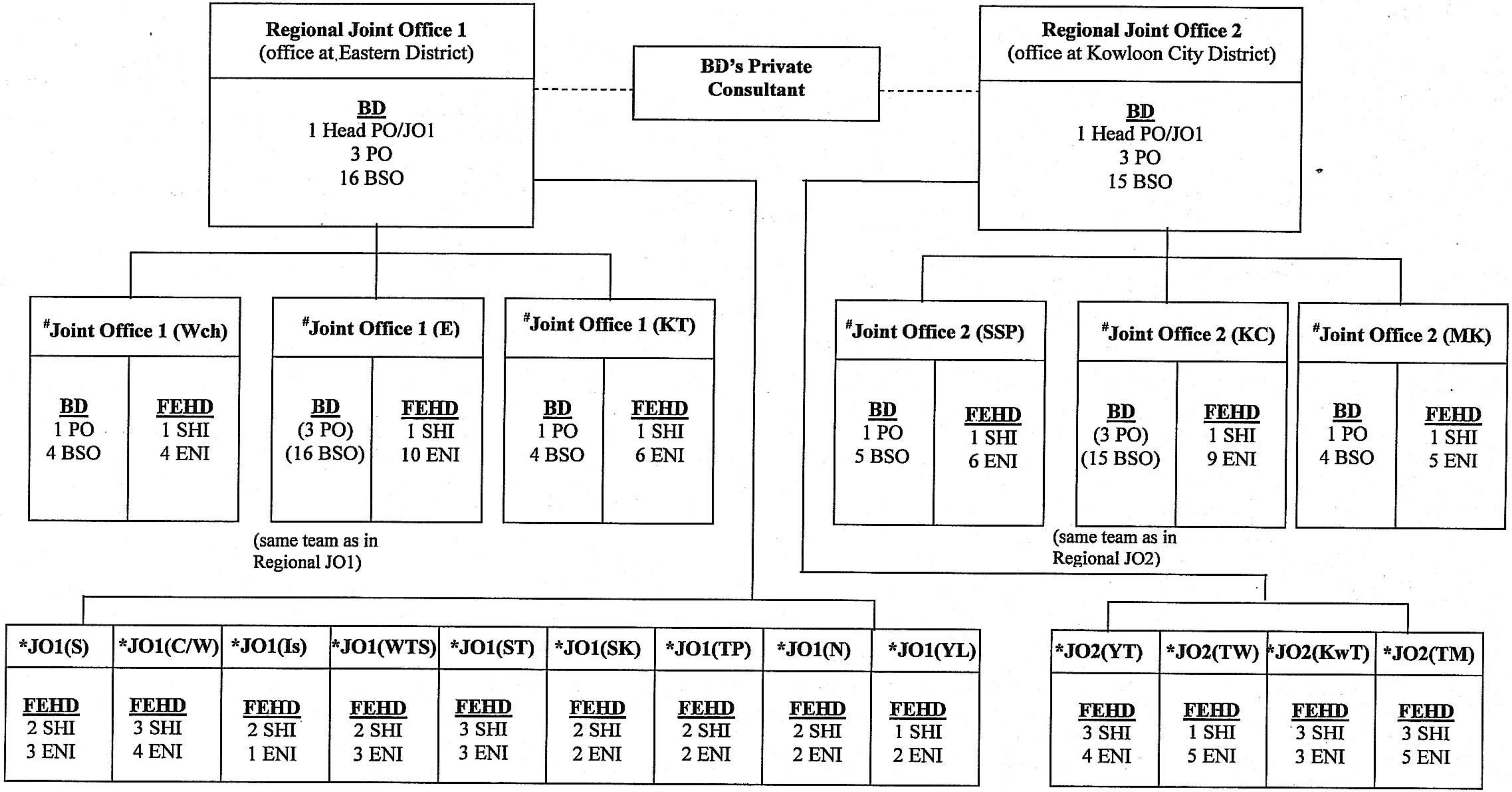
Tests used in Investigating Water Seepage Complaints

Colour Water Test	This is used to test leakage in drainage pipes or sanitary fitments. Diluted colour dye water is discharged into the sanitary fitments or drainage inlets. The seepage area is then monitored for up to 4 weeks, and the test is considered positive if colour dye appears.
Infrared Scanner	Where the seepage area is not readily accessible, Infrared Scanner is used to measure moisture content and help deduce seepage source. The scanner cannot itself identify the source of seepage. It however can detect the variations of temperature and hence the presence of water on a surface.
Moisture Content Monitoring Test	This is commonly used to check any seepage due to rainwater infiltration through external wall. The moisture content at the affected area is measured with a moisture meter under different weather conditions. The change in the moisture content will determine if the test is considered positive.
Ponding Test	This is used to test leakage through floor slab, i.e. infiltration. Diluted colour dye water is poured onto the test area and kept for 2 hours. The seepage area is then monitored for up to 4 weeks, and the test is considered positive if colour dye appears. Alternatively, clear water may be used for the test but less effective. The change of moisture content at the seepage area is recorded before, during and after the test. The test is considered positive if there is significant increase in moisture content at the seepage area.
Reversible Pressure Test	This is used to test leakage in water supply pipes (both potable and flushing water). The rate of water dripping or moisture content at selected spot(s) is measured before and after the water pressure in the suspected water supply pipe is released by draining water out of the pipe. Then, the rate of water dripping or moisture content at the spot is measured again on resuming the water pipe pressure. The change in the rate of water dripping or moisture content measured during the test will determine if the test is considered positive.

Water Meter Flow Check	This is used to test leakage in potable water supply pipes. The first step is to turn off all water taps and to record the reading on the water meter. After 30 minutes the meter reading is recorded again. Change in the two readings will indicate leakage.

Annex 2
(para. 4.4)

Organisation and Staffing of Joint Office



These 6 District JOs are combined offices with BD and FEHD officers working under one roof.
* These 13 District JOs are "split" offices with BD officers working in Regional JOs and other District JOs.

PO – Professional Officer
BSO – Building Safety Officer

ENI – Environmental Nuisance Investigator
SHI – Senior Health Inspector (part-time)